

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 5482 of 1999

to

FIRST APPEALNo 5488 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BAKABHAI SUKHABHAI

Appearance:

Mr.K.G. Sheth, AGP, for the appellant
Mr.Vimal Patel for the respondents

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE C.K.BUCH

Date of decision: 02/05/2000

COMMON ORAL JUDGMENT:

1. Appellant, by filing these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, has questioned legality and validity of common judgment and award dated September 30, 1998, rendered by the learned Assistant Judge, Junagadh, in Land Reference Cases Nos. 41 of 1994 to 47 of 1994. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

2. A proposal was sent by the Executive Engineer, Panchayat Irrigation Department, Junagadh, to acquire agricultural lands of village Vekaria. The said proposal was scrutinized by the State Government and notification to acquire lands of the respondents came to be issued under Section 4(1) of the Act, which came to be published in the Government Gazette on April 2, 1981. After following usual procedure under the Act, declaration under Section 6 of the Act was made on July 18, 1981 and the notices came to be issued under Section 9 of the Act to the respondents. The respondents appeared before the Land Acquisition Officer and claimed compensation of their acquired lands. Having regard to the materials placed before him, the Land Acquisition Officer made his award on March 9, 1980 and offered compensation to the respondents at the rate of Rs. 6500 per Hectare for barret (non-irrigated) lands; Rs.9500 per Hectare for irrigated lands and Rs.750/- per Hectare for kharaba lands. The respondents were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Junagadh, which were numbered as Land Reference Cases Nos. 41 of 1994 to 47 of 1994.

3. In the reference applications, the respondents contended that acquired lands were having high fertility and claimed used to raise three crops in a year and were getting good income out of sale of agricultural produces. Before the Reference Court, the respondents claimed compensation of acquired lands at the rate of Rs.15,000 per bigha for non-irrigated lands and Rs.20,000/- per bigha for irrigated lands.

4. The reference applications were contested by the appellant by filing reply at Exh.13, inter alia, contending that the respondents are not entitled to additional compensation, as compensation offered by the

Land Acquisition Officer was just and adequate. It was further contended that the Land Acquisition Officer had taken into consideration all the relevant aspect and material placed before him for fixing of market price of acquired lands. It was further contended that the Land Acquisition Officer had taken into consideration previous sale deed of five years for fixing market price of the acquired lands. It was further contended that the Land Acquisition Officer had taken into consideration fertility and situation of acquired lands and, therefore, the applications be dismissed. The Reference Court consolidated all the land acquisition reference cases and Land Acquisition Reference Case No.41 of 1994 was treated as main reference wherein the parties led common evidence. On rival assertions of the parties, commons issues were raised at Exh.31.

5. To substantiate their claim of enhanced compensation of acquired lands, the respondents examined (i) Bakabhai Sukahbhai at Exh.15, (ii) Manubhai Punjabhai Exh.17, (iii) Nathabhai Hadabhai Exh.19, (iv) Punjabhai Jadavbhai Exh.21, (v) Bhagwanji Mavji at Exh.23, (vi) Natwarlal Hargovind Mehta Exh.25, and (vii) Arunkumar Laxmishanker Bhatt Exh.27. The respondents produced documentary evidence such as 7/12 extracts of acquired lands at Exh.39 to 56. The respondents also produced certified copy of previous award rendered in Land Acquisition Case No.294 of 1983 at Exh.73. The respondents also produced certified copy of sale deed of agricultural lands of survey No.86-paiki of village Kathrota at Exh.22. The respondents also produced certified copy of sale deed of agricultural lands of survey No.86/1 of village Kathrota at Exh.24. The respondents also produced certified copy of previous award of Land Reference Case No.238 of 1983 and allied matters with respect to acquired lands of village Vekaria at Exh.71. The appellant did not lead any oral or documentary evidence.

6. The Reference Court, for the purpose of determination of market value of present acquired lands of village Vekaria, relied upon previous award Exh.73, wherein, market price of agricultural lands of village Vekaria was determined at Rs.391 per Are as on February 26, 1981. Relying upon previous award Exh.73 render in Land Reference Case No.294 of 1983, the Reference Court determined market price of acquired lands of village Vekaria at Rs.391/- per sq.mtr as on April 2, 1981. The Reference Court, for the purpose of determination of market value of irrigated lands, had applied increase of 25% to the market value of non-irrigated lands of Rs.391/and determined market price of acquired irrigated

lands at the rate of Rs.485/- per Are, by the impugned common award giving rise to these appeals.

7. Mr. K.G. Sheth, learned Assistant Government Pleader, has taken us through the record and proceedings of the Reference Court and has vehemently submitted that the respondents had not produced any relevant piece of evidence for determination of market value of present acquired lands of village Vekaria. It was further submitted that the Reference Court has erred in placing reliance on previous award Exh.73 for determination of market price of present acquired land. The counsel for the appellant further submitted that the previous award Exh.73 was neither comparable nor relevant and, therefore, the same should not have been made basis for the purpose of determining market value of the lands acquired in the present case. It was claimed that no cogent evidence was led by the respondents to establish that they were entitled to enhanced compensation and, therefore, the impugned award should be set aside.

8. Mr.Vimal Patel, learned counsel for the respondents, has vehemently submitted that evidence of respondents' witnesses has proved that the present acquired lands of village Vekaria were fertile and irrigated and the respondents-agriculturists were taking three crops in a year. Learned counsel for the respondents further submitted that the Reference Court was justified in placing reliance on previous award Exh.73 relating to acquired lands of the same village, and when the Reference Court found it to be most comparable and relevant for determining market value of the present acquired lands of village Vekaria, no error was committed by the Reference Court in placing reliance on previous award Exh.73 of the same village. Learned counsel for the respondents further submitted that the Reference Court had awarded a just and adequate compensation in respect of acquired lands of village Vekaria and, therefore, the appeals filed by the State deserve to be dismissed.

9. We have heard learned counsel for the appellant and learned counsel for the respondents at length. We have also taken into consideration relevant documents as well as oral evidence produced by learned counsel for the appellant for our perusal before deciding this group of appeals.

10. None of the contentions raised by learned Assistant Government Pleader for the appellant deserves

any merit and the same require to be rejected.

11. The lands, which were subject matter of previous award Exh.73, were also acquired for the same public purpose by issuance of notification under Section 4(1) of the Act on April 2, 1981, wherein, the Reference Court had determined market value of acquired lands of village Vekaria at the rate of Rs.391/- per Are for non-irrigated lands and Rs.485/- per Are for irrigated lands. It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from adjoining village. In absence of any other evidence in the nature of sale instance or expert opinion, one of the modes for determination of market value of acquired lands is 'previous award' rendered by the Reference Court in respect of lands having same fertility and situated adjoining to each other. (See: AIR 1993 Supreme Court 227 : Ranjit Singh and others vs. Union Territory of Chandigarh).

12. At the time of hearing, learned Assistant Government Pleader has submitted that previous award exh.73 rendered in L.R.C. No.205/92 was challenged in this Court by filing First Appeal (Stamp) No.22745 of 1993. This Court had called for papers of First Appeal (St.) No.22745 of 1993 from the First Appeal Department. Record of the above First Appeal (St.) No.22745 of 1993 indicated that previous award Exh.73 was challenged in this Court after inordinate delay. This Court had, by order dated May 2, 2000, rejected application for condonation of delay and the above First Appeal (St.) No.22745 of 1993 was dismissed as delay was not condoned. In view of the above facts and situation, previous award Exh.73 rendered in L.R.C. No.205/91 was confirmed and has become final.

13. The present acquired lands and the acquired lands of previous award Exh.73 were of the same village Vekaria and were having same fertility and notifications under Section 4(1) of the Act were also issued in near proximity of time. Therefore, we are of the opinion that previous award Exh.73 is relevant and comparable for the purpose of determination of market value of the present acquired lands.

14. It may further be stated that agricultural lands of village Vekaria were placed under acquisition by issuance of notification under Section 4(1) of the Act, which was published on August 23, 1984 and the Reference Court, in Reference Cases Nos.670/89 to 674/80, had

relied upon previous award rendered in Land Acquisition Case No.294/83, with respect to acquired lands of very same village, and had determined market value of acquired lands as on August 23, 1984 at Rs.528 per Are for non-irrigated lands. In the previous award rendered in Land Acquisition Case No.294/83, the Reference Court had determined market value of village Vekaria at Rs.391/per Are as on April 2, 1981. As there was gap of three years in issuance of notifications of both acquired lands, the Reference Court had determined market price at the rate of Rs.528/- per Are by giving rise in price. The judgment of the Reference Court was challenged in this Court by filing First Appeals Nos.1769 of 1999 to 1773 of 1999, wherein this Court (Coram: M.H. Kadri & J.R. Vora, JJ.) by judgment and order dated November 3, 1999, had confirmed determination of market value of acquired lands of village Vekaria at Rs.528/- per Are for non-irrigated lands. Thus, the award rendered in Land Reference Case No.294 of 1983 (Exh.73) was relied on by the Reference Court as well as this Court in various reference cases and first appeals for determination of market value of acquired lands of village Vekaria. It has also come in the evidence led by the respondents that, because of vast acquisition of agricultural lands of village Vekaria for the above-stated public purpose, there was heavy pressure on the land. Sale deed, which was also produced by the respondents in the Reference Court, had also indicated that prevailing market rate on the date of notification under Section 4(1) of the Act was about Rs.300 per Are. Therefore, in our opinion, the Reference Court had not committed any error in placing reliance on previous award Exh.73 in respect of acquired lands of village Vekaria, which had become final, for the purpose of ascertaining market value of acquired lands of the same village Vekaria. The Reference Court has correctly appreciated the evidence of the case and applied principles which have been enunciated by the Supreme Court from time to time to the facts of the case. We are of the view that determination of market value of acquired lands of village Vekaria cannot be regarded as excessive at all. Under the circumstances, we are of the opinion that no ground is made out by learned counsel for the appellants to interfere with the impugned award in these appeals. The benefits extended to the respondents under statutory provisions of Sections 23(1-A), 23(2) and interest under Section 28 are also just and proper and do not call for any interference in these appeals.

15. For the foregoing reasons, all the appeals fail and are dismissed with no order as to costs.

(swamy)